

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

BEST MEDICAL INTERNATIONAL,
INC.,

Plaintiff,

v.

ELEKTA, INC. AND ELEKTA
LIMITED,

Defendants.

Civil Action No.: 1:19-cv-03409-MLB

JURY TRIAL DEMANDED

**DECLARATION OF VID R. BHAKAR IN SUPPORT OF ELEKTA,
INC.’S RESPONSE TO PLAINTIFF’S MOTION TO FILE UNDER
SEAL (DKT. 132)**

I, VID R. BHAKAR, declare as follows:

1. I am a resident of the United States and over the age of 21. I am a partner with the law firm Squire Patton Boggs (US) LLP, and counsel of record in this matter for Defendants Elekta, Inc., and Elekta Limited (collectively, “Elekta”).

2. I submit this declaration in support of Elekta’s Response to Plaintiff Best Medical International, Inc.’s (“Plaintiff”) Motion to File Under Seal (Dkt. 132) (“Response”). I have personal knowledge of the facts stated herein and if

called as a witness could competently testify thereto.

3. Sealed Exhibit 1 (Dkt 131) is a copy of Plaintiff's Infringement Contentions served on Elekta on August 30, 2019. At the top of every page on the Infringement Contentions, Plaintiff displays the confidentiality designation "HIGHLY CONFIDENTIAL – SOURCE CODE – OUTSIDE ATTORNEYS' EYES ONLY."

4. The pages of Plaintiff's Infringement Contentions (Dkt. 131) contain numerous citations to and excerpts made to Elekta's highly confidential proprietary business information. The actual citations and excerpts in the Infringement Contentions appear to have been made by Plaintiff's counsel by taking copies of Elekta's highly confidential proprietary business information that Elekta produced to Plaintiff's as part of Elekta's document product in this litigation.

5. Every page of the relevant Elekta's highly confidential proprietary business information as produced by Elekta to Plaintiff displays the confidentiality designations "HIGHLY CONFIDENTIAL – SOURCE CODE – OUTSIDE ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL - OUTSIDE ATTORNEYS' EYES ONLY."

Elekta's Highly Confidential Proprietary Source Code Included in Plaintiff's Infringement Contentions (Dkt. 131)

6. The following table is an itemized list of the pages in the

Infringement Contentions (Dkt. 131) where Plaintiff includes citations to and excerpts of Elekta’s highly confidential and proprietary source code designated by Elekta as “HIGHLY CONFIDENTIAL – SOURCE CODE – OUTSIDE ATTORNEYS’ EYES ONLY” pursuant to the terms of the Protective Order (Dkt. 49) and the Stipulated Supplemental Protective Order Regarding Source Code (Dkt. 89):

7.

Pages in Infringement Contentions were excerpt is cited	Elekta’s Bates Number of Cited Elekta Source Code Produced and Designated as <i>HIGHLY CONFIDENTIAL – SOURCE CODE – OUTSIDE ATTORNEYS’ EYES ONLY</i>
Dkt. 131 at 13 (’096 Contentions p. 12)	ELEKTABMI-SOURCECODE00000026
Dkt. 131 at 14 (’096 Contentions p. 13)	ELEKTABMI-SOURCECODE00000029
Dkt. 131 at 15 (’096 Contentions p. 14)	ELEKTABMI-SOURCECODE00000023-24
Dkt. 131 at 25 (’096 Contentions p. 24)	ELEKTABMI-SOURCECODE00000001
Dkt. 131 at 26 (’096 Contentions p. 25)	ELEKTABMI-SOURCECODE00000002
Dkt. 131 at 26 (’096 Contentions p. 25)	ELEKTABMI-SOURCECODE00000003
Dkt. 131 at 27 (’096 Contentions p. 26)	ELEKTABMI-SOURCECODE00000002
Dkt. 131 at 27 (’096 Contentions p. 26)	ELEKTABMI-SOURCECODE00000003
Dkt. 131 at 28 (’096 Contentions p. 27)	ELEKTABMI-SOURCECODE00000002-03
Dkt. 131 at 93	ELEKTABMI-SOURCECODE00000026

Pages in Infringement Contentions were excerpt is cited	Elekta's Bates Number of Cited Elekta Source Code Produced and Designated as <i>HIGHLY CONFIDENTIAL – SOURCE CODE – OUTSIDE ATTORNEYS' EYES ONLY</i>
('283 Contentions p. 11)	
Dkt. 131 at 94 ('283 Contentions p. 12)	ELEKTABMI-SOURCECODE00000029
Dkt. 131 at 95 ('283 Contentions p. 13)	ELEKTABMI-SOURCECODE00000023-24
Dkt. 131 at 99 ('283 Contentions p. 17)	ELEKTABMI-SOURCECODE00000001
Dkt. 131 at 100 ('283 Contentions p. 18)	ELEKTABMI-SOURCECODE00000002
Dkt. 131 at 101 ('283 Contentions p. 19)	ELEKTABMI-SOURCECODE00000002
Dkt. 131 at 101 ('283 Contentions p. 19)	ELEKTABMI-SOURCECODE00000003
Dkt. 131 at 102, 103 ('283 Contentions pp. 20, 21)	ELEKTABMI-SOURCECODE00000002-03
Dkt. 131 at 123 ('283 Contentions p. 41)	ELEKTABMI-SOURCECODE00000026
Dkt. 131 at 124 ('283 Contentions p. 42)	ELEKTABMI-SOURCECODE00000029
Dkt. 131 at 125 ('283 Contentions p. 43)	ELEKTABMI-SOURCECODE00000023-24
Dkt. 131 at 129 ('283 Contentions p. 47)	ELEKTABMI-SOURCECODE00000026
Dkt. 131 at 130 ('283 Contentions p. 48)	ELEKTABMI-SOURCECODE00000029
Dkt. 131 at 131 ('283 Contentions p. 49)	ELEKTABMI-SOURCECODE00000023-24
Dkt. 131 at 139 ('283 Contentions p. 57)	ELEKTABMI-SOURCECODE00000026
Dkt. 131 at 140 ('283 Contentions p. 58)	ELEKTABMI-SOURCECODE00000029
Dkt. 131 at 141 ('283 Contentions p. 59)	ELEKTABMI-SOURCECODE00000023-24

Pages in Infringement Contentions were excerpt is cited	Elekta's Bates Number of Cited Elekta Source Code Produced and Designated as <i>HIGHLY CONFIDENTIAL – SOURCE CODE – OUTSIDE ATTORNEYS' EYES ONLY</i>
Dkt. 131 at 151-152 ('490 Contentions pp. 6-7)	ELEKTABMI-SOURCECODE0000015-17
Dkt. 131 at 151 ('490 Contentions p. 7)	ELEKTABMI-SOURCECODE0000020
Dkt. 131 at 153-154 ('490 Contentions pp. 8-9)	ELEKTABMI-SOURCECODE0000023-24
Dkt. 131 at 154 ('490 Contentions p. 9)	ELEKTABMI-SOURCECODE0000039
Dkt 131 at 157 ('490 Contentions p. 12)	ELEKTABMI-SOURCECODE0000039
Dkt 131 at 161-162, 171-172 ('490 Contentions pp. 16-17, 26-27)	ELEKTABMI-SOURCECODE0000015-17
Dkt. 131 at 163 ('490 Contentions p. 18)	ELEKTABMI-SOURCECODE0000015
Dkt. 131 at 164 ('490 Contentions p. 19)	ELEKTABMI-SOURCECODE0000015-17
Dkt. 131 at 166-167 ('490 Contentions pp. 21-22)	ELEKTABMI-SOURCECODE0000023-24
Dkt. 131 at 167 ('490 Contentions p. 22)	ELEKTABMI-SOURCECODE0000039
Dkt. 131 at 173, 174 ('490 Contentions pp. 28, 29)	ELEKTABMI-SOURCECODE0000020

8. Elekta made available for inspection the above-identified pages of its highly confidential and proprietary source code as part of its July 8, 2019 core technical documents production pursuant to Section 7(b) of the July 15, 2019 Scheduling Order entered in this case (Dkt No. 47). “Core technical documents”

are those documents related to the accused product(s), sufficient to show how the accused product(s) work(s), including but not limited to non-publicly available operation manuals, product literature, schematics, and specifications.” *Id.*

9. More particularly, Elekta’s core technical production of its non-public, highly confidential and proprietary source code was made available for inspection to Plaintiff in electronic form on a stand-alone computer in Elekta’s counsel’s Washington D.C Office pursuant to the terms of the Stipulated Supplemental Protective Order Regarding Source Code (Dkt. 89).

10. Further, pursuant to the terms of the pursuant to the terms of the Protective Order (Dkt. 49) and the Stipulated Supplemental Protective Order Regarding Source Code (Dkt. 89), all of the pages of Elekta highly confidential source code that Elekta produced to Plaintiff bore Bates numbers with the prefix “ELEKTABMI-SOURCECODE” and displayed the confidentiality designation “HIGHLY CONFIDENTIAL – SOURCE CODE – OUTSIDE ATTORNEYS’ EYES ONLY.”

11. Elekta’s non-public, highly confidential and proprietary source code describes in detail the algorithms or structure of software of the accused products. The source code is Elekta’s proprietary business information, contains Elekta trade secrets, and describes and reflects Elekta’s confidential research and development efforts.

12. If the contents of Plaintiff's Infringement Contentions (Dkt. 131) were made public, there is an extremely high and unacceptable risk that Elekta's highly confidential and proprietary source code contained in the Infringement Contentions could be used by competitors or the general public to make unauthorized inspections and copies of highly confidential and proprietary features of Elekta products. The public disclosure of this information would also unfairly create a very high risk of allowing competitors and other third parties to improperly and unjustly compare and/or benchmark their products and technology to highly confidential and proprietary information contained in the Elekta source code. Such unauthorized and improper disclosure and access would seriously harm Elekta and put it at a significant disadvantage, especially if this information was used by its competitors and computer code programmers.

Elekta's Core Technical Documents Included in Plaintiff's Infringement Contentions (Dkt. 131) Containing Elekta's Highly Confidential, Proprietary Non-Source Code Business Information

13. The following table is an itemized list of the pages in the Infringement Contentions (Dkt. 131) where Plaintiff includes citations to and excerpts of Elekta's highly confidential and proprietary non-source code business information designated by Elekta as "HIGHLY CONFIDENTIAL — OUTSIDE ATTORNEYS' EYES ONLY" pursuant to the terms of the Protective Order (Dkt.

49):

Pages in Infringement Contentions were excerpt is cited	Elekta's Bates Number of Cited Elekta Core Technical Document Produced and Designated as <i>HIGHLY CONFIDENTIAL</i> – <i>OUTSIDE ATTORNEYS' EYES ONLY</i>
Dkt. 131 at 53 ('096 Contentions p. 52)	ELEKTABMI0004425
Dkt. 131 at 58 ('096 Contentions p. 57)	ELEKTABMI0004425
Dkt. 131 at 68 ('175 Contentions p. 4)	ELEKTABMI0004666
Dkt. 131 at 72 ('175 Contentions p. 8)	ELEKTABMI0004589 ELEKTABMI0004543
Dkt. 131 at 73 (' 175 Contentions p. 9)	ELEKTABMI0005185
Dkt. 131 at 75-76 (' 175 Contentions p. 11-12)	ELEKTABMI0004586-87 ELEKTABMI0005185
Dkt. 131 at 79 (' 175 Contentions p. 15)	ELEKTABMI0005185 ELEKTABMI0004543
Dkt. 131 at 81 (' 175 Contentions p. 17)	ELEKTABMI0005185
Dkt. 131 at 98 ('283 Contentions p. 16)	ELEKTABMI0004425
Dkt. 131 at 111 ('283 Contentions p. 29)	ELEKTABMI0004425
Dkt. 131 at 128 ('283 Contentions p. 46)	ELEKTABMI0004425
Dkt. 131 at 136 ('283 Contentions p.54)	ELEKTABMI0004425
Dkt. 131 at 149 ('490 Contentions p. 4)	ELEKTABMI0004543
Dkt. 131 at 150 ('490 Contentions p. 5)	ELEKTABMI0004666
Dkt. 131 at 155 ('490 Contentions p. 10)	ELEKTABMI0004419 ELEKTABMI0004425
Dkt 131 at 156 ('490 Contentions p. 11)	ELEKTABMI0005723

Pages in Infringement Contentions were excerpt is cited	Elekta's Bates Number of Cited Elekta Core Technical Document Produced and Designated as <i>HIGHLY CONFIDENTIAL</i> – <i>OUTSIDE ATTORNEYS' EYES ONLY</i>
Dkt. 131 at 157 ('490 Contentions p. `1)	ELEKTABMI0004666
Dkt. 131 at 160 ('490 Contentions p. 15)	ELEKTABMI0004666
Dkt 131 at 162 ('490 Contentions p. 17)	ELEKTABMI0005528 ELEKTABMI0004596 ELEKTABMI0004593
Dkt 131 at 163 ('490 Contentions p. 18)	ELEKTABMI0004593
Dkt 131 at 166 ('490 Contentions p. 21)	ELEKTABMI0005061
Dkt 131 at 170 ('490 Contentions p. 25)	ELEKTABMI0004666
Dkt 131 at 177 ('490 Contentions p. 28)	ELEKTABMI0005061

14. On July 8, 2019, Elekta produced the above-identified pages of its highly confidential proprietary business information as part core technical documents production pursuant to Section 7(b) of the July 15, 2019 Scheduling Order entered in this case (Dkt No. 47). As previously mentioned, “core technical documents” are those documents related to the accused product(s), sufficient to show how the accused product(s) work(s), including but not limited to non-publicly available operation manuals, product literature, schematics, and specifications.” *Id.* All of the above-identified pages contain Elekta's highly confidential proprietary, non-public business and technical information describing

in detail various aspects of Elekta accused products.

16. All of the pages of the above-identified Elekta highly confidential and proprietary core technical documents were produced by Elekta to Plaintiff bearing Bates numbers with the prefix “ELEKTABMI” and displaying the confidentiality designation “HIGHLY CONFIDENTIAL –OUTSIDE ATTORNEYS’ EYES ONLY” pursuant to the terms of the pursuant to the terms of the Protective Order (Dkt. 49).

17. Elekta’s non-source code Core Technical Documents identified in the table above is Elekta’s non-public, highly confidential and proprietary business information, contains Elekta trade secrets, and describe Elekta’s confidential research and development efforts.

18. If the contents of Plaintiff’s Infringement Contentions (Dkt. 131) were made public, there is an extremely high and unacceptable risk that information from Elekta’s highly confidential and proprietary non-source code Core Technical Documents included in the Infringement Contentions could be used by competitors or the general public to make unauthorized inspections and copies of highly confidential and proprietary features of Elekta products. The public disclosure of this information also unfairly creates a very high risk of allowing competitors and other third parties to improperly and unjustly compare and/or benchmark their products and technology to Elekta’s highly confidential

and proprietary information contained in Elekta's Core Technical Documents.

Such unauthorized and improper disclosure and access would seriously harm and put Elekta at a significant disadvantage, especially to its competitors.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: June 26, 2020

By: /s/ Vid R. Bhakar
Vid R. Bhakar